

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

<b>CARL WYATT,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>CIV-07-681-R</b>
	)	
<b>MARTY SIRMONS, Warden,</b>	)	
	)	
<b>Respondent.</b>	)	

**ORDER**

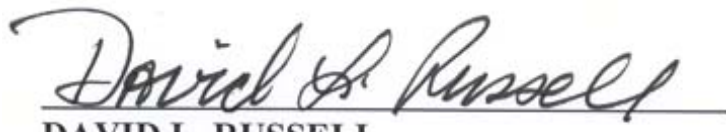
Before the Court are the Report and Recommendation of United States Magistrate Judge Doyle W. Argo entered August 21, 2007 [Doc. No. 9] and Petitioner's Objection to the Report and Recommendation filed September 4, 2007 [Doc. No. 11]. The Magistrate Judge found that the petition for a writ of habeas corpus herein is a second or successive one, concluded that the Court was without jurisdiction to consider it and recommended that the action be transferred to the Tenth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631.

Petitioner in his objection states that he promptly filed this action once newly discovered evidence was made known to him; that his trial counsel was ineffective in numerous cases which were reversed as a result; that the prosecutor engaged in misconduct; and that Petitioner's co-defendant has not served a single day of a sentence the jury was told he would serve in exchange for his testimony at Petitioner's trial. None of Petitioner's assertions is relevant because this is a successive § 2254 petition for which Petitioner has not received authorization from the Tenth Circuit Court of Appeals for this Court to consider

pursuant to 28 U.S.C. § 2244(b)(3)(A). Absent such authorization, this Court is without jurisdiction over this petition, *see, e.g., Berryhill v. Evans*, 466 F.3d 934, 937 (10<sup>th</sup> Cir. 2006), *cert. denied*, 127 S.Ct. 1377 (2007), and transfer of it to the Tenth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631, in the interest of justice, is appropriate.

In accordance with the foregoing, the Report and Recommendation of the Magistrate Judge [Doc. No. 9] is ADOPTED in its entirety and the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is TRANSFERRED to the Tenth Circuit Court of Appeals.

**It is so ordered this 10<sup>th</sup> day of September, 2007.**

  
DAVID L. RUSSELL  
UNITED STATES DISTRICT JUDGE